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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 344

HUBERT WORK, AS SECRETARY OF THE INTERIOR, petitioner

v.

ROBERT I. BRAFFET, ADMINISTRATOR OF THE ESTATE of Mark P. Braffet, deceased

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Court of Appeals of the District of Columbia (R. 17) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered April 4, 1927. (R. 23.) Petition for certiorari was filed July 1, 1927, and granted October 24, 1927. (R. 25.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

THE QUESTIONS PRESENTED

Under an Act allowing purchase of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, Braffet filed with the Interior Department an application to purchase as coal land a school section which he claimed had not passed under the school grant to Utah, because known to be coal land at the time of the grant.

Under rules of the Interior Department the land was treated as having been withdrawn from entry by the State grant, and his application was treated as a contest of the State's title. While the contest remained pending and undecided, the leasing Act was passed, providing that coal lands should only be disposed of by lease.

The principal question is whether Braffet had acquired an interest which could not be and was not extinguished by the leasing Act.

If this question is resolved against the petitioner, a question then arises whether, as the Department of the Interior has never decided the question whether the lands were known mineral at the time of the State grant, but refused to proceed with the contest initiated as above stated, on the assumption that the coal leasing Act removed the necessity of deciding the contest, Braffet was entitled to a patent, or anything more than to have his contest reopened and determined by the Secretary of the Interior.

THE STATUTES

Section 2347, R. S. (see U. S. C., Title 30, Sec. 71), provides:

> Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land-office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

Section 2351, R. S. (see U. S. C., Title 30, Sec. 75), provides:

> * * * The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

The Act of February 25, 1920, c. 85, 41 Stat. 437, 438, 451 (see U. S. C., Title 30, Secs. 181, 201, 193), contains the following provisions:

> SEC. 1. That deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands con-

taining such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Act known as the Appalachian Forest Act, approved March 1, 1911 (Thirty-sixth Statutes, page 961), and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this Act to citizens of the United States, or to any association of such persons, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, and in the case of coal, oil, oil shale, or gas, to municipalities * * *.

SEC. 2. That the Secretary of the Interior is authorized to, and upon the petition of any qualified applicant shall, divide any of the coal lands or the deposits of coal, classified and unclassified, owned by the United States, outside of the Territory of Alaska, into leasing tracts of forty acres each, or multiples thereof, and in such form as, in the opinion of the Secretary of the Interior, will permit the most economical mining of the coal in such tracts, but in no case exceeding two thousand five hundred and sixty acres in any one leasing tract, and thereafter the Secretary of the Interior shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by

competitive bidding or by such other methods as he may by general regulations adopt, to any qualified applicant: *Provided,* That the Secretary is hereby authorized, in awarding leases for coal lands heretofore improved and occupied or claimed in good faith, to consider and recognize equitable rights of such occupants or claimants: * * * *And provided further,* That no lease of coal under this Act shall be approved or issued until after notice of the proposed lease, or offering for lease, has been given for thirty days in a newspaper of general circulation in the county in which the lands or deposits are situated: * * *.

* * * * *

SEC. 37. That the deposits of coal, phosphate, sodium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits described in the joint resolution entitled "Joint resolution authorizing the Secretary of the Interior to permit the continuation of coal-mining operations on certain lands in Wyoming," approved August 1, 1912 (Thirty-seventh Statutes at Large, page 1346), shall be subject to disposition only in the form and manner provided in this Act, except as to valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.

Rule 1 of the Regulations of March 6, 1903 (32 Land Dec. 39), issued by the Secretary of the Interior, is as follows:

> RULE 1. When a school section is identified by the government survey and no claim is at the date when the right of the State would attach, if at all, asserted thereto under the mining or other public-land laws, the presumption arises that the title to the land has passed to the State, but this presumption may be overcome by the submission of a satisfactory showing to the contrary. Applications presented under the mining laws covering parts of a school section will be disposed of in the same manner as other contest cases.

STATEMENT

This action was instituted June 12, 1924, by the respondent's intestate in the Supreme Court of the District of Columbia to obtain a mandatory injunction directing the Secretary of the Interior to vacate a decision rendered by him on July 31, 1922, and to compel him to issue a patent to a quarter section of land in Carbon County, in the State of Utah. (R. 5.) The case was submitted on bill and answer. (R. 14.) The facts are those admitted in or alleged by the answer.

The tract in question is SE ¼ of Section 32, township 12 S., range 10 E., S. L. M., Salt Lake City land district. The tract was included in the school-land grant to the State of Utah under the Enabling

Act of July 16, 1894 (c. 138, 28 Stat. 107, 109), granting to Utah sections 2, 16, 32, and 36 in every township of the proposed State. The grant became effective, by its terms, on the admission of the State to the Union, which took place January 4, 1896. This grant has been construed not to include mineral lands known to be such at the time the grant took effect. *United States* v. *Street*, 245 U. S. 563.

The official Government survey had returned this tract as nonmineral, the survey having been made prior to the admission of Utah into the Union. (R. 6.)

Continuously following the grant, Utah claimed this tract under it, and in May, 1902, in due course, sold it for value to one Laura Bird, who thereafter conveyed it to the Pleasant Valley Coal Company, which company continued, until this controversy arose, to be the record owner and paid the taxes thereon. (R. 10.)

On March 6, 1903, the Circular of Instructions above mentioned was issued by the Department of the Interior, which provided that when a school section is identified by a Government survey and no claim under the public land laws exists at the time when the right of the State would attach the presumption arises that the title has passed to the State and that applications for purchase under the mining laws covering parts of school sections "will be disposed of in the same manner as other contest cases." (32 Land Dec. 39.)

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On November 10, 1915, the Secretary of the Interior suspended the functions of the local land officers at the Salt Lake City land office as to coal-land applications for lands included in school sections, and directed the said officers to receive and transmit to the General Land Office all applications to enter, based on the alleged mineral character of land, and such instructions were in full force and effect to and including June 13, 1918. (R. 6.)

On February 4, 1918, Mark P. Braffet, of whose estate the respondent is administrator, filed in the local land office at Salt Lake City his application to purchase the above-described tract as coal land. (R. 6.) Braffet from 1902 to 1917 was attorney for the Pleasant Valley Coal Company, and evidently made use of information so obtained that the lands are in fact coal lands, as a basis for his application. (R. 7.) His application to purchase was treated as a contest of Utah's title, under the rules and regulations of the General Land Office, and on July 25, 1918, citation was issued to the State of Utah in accordance with the rule of the General Land Office as to contests. (R. 8.)

On August 13, 1918, the State answered, alleging that they were not known coal lands on the date of the grant. The Coal Company intervened with a like allegation. Braffet assumed the burden of his contest and introduced evidence in support of his claim at a hearing before the local land officers. At the conclusion of Braffet's case the State and the Coal Company made a motion to dismiss, in the na-

ture of a demurrer to the evidence, which motion was sustained by the local land officers without hearing any testimony in behalf of the State's claim. (R. 7, 8, 9.)

Braffet appealed to the Commissioner of the General Land Office, who, on February 28, 1921, reversed the judgment of the local land office, but, instead of remanding the case to hear evidence for the State, directed that the State's protest be dismissed. (R. 9.)

The State and the Coal Company appealed to the Secretary of the Interior, who, on July 31, 1922, held that the local officers erred in dismissing the contest of Braffet on the ground of the insufficiency of his evidence, and that the Commissioner of the General Land Office had also erred in disposing of the case without affording the State and the Coal Company an opportunity to submit evidence. He held that Braffet's coal application made him a mere contestant, and remanded the case to the local office to proceed with the contest by hearing further testimony. He also directed that the Government should formally intervene and be represented by an officer of the field service, and in the event that the contestant did not proceed with the contest it be prosecuted by the Government. (49 Land Dec. 212.)

The Secretary has never determined that this tract was known coal land at the time of the grant. In his answer the Secretary did not admit or deny that the land was in fact known coal land in 1896,

alleging that the question as to the known character of the land at the time of the grant has never been finally determined by the Land Department. (R. 11.)

In the meantime, while the proceedings above described were pending, and the question as to the nonmineral character of the land at the time of the grant awaited decision in the Department, Congress passed the leasing Act of February 25, 1920.

The Department of the Interior and the Coal Company thereupon proceeded on the assumption that the institution by Braffet of what amounted to a contest under the Department regulations gave him no right which prevented Congress from withdrawing the land from entry, and that the effect of the leasing Act was to end the necessity of proceeding with the contest. The Coal Company, for the purpose of ending the controversy and litigation between it and the United States, offered to waive its claim under the State grant and to take a coal lease from the United States, expressly stipulating that its waiver was on condition that the lease be granted. The Coal Company had obtained a lease of other lands under the leasing Act on August 3, 1921, and on June 4, 1923, that lease was modified by including in its operation the tract here involved. (R. 10, 11.) That lease provided for the payment of royalties to the United States, with an obligation to mine a minimum tonnage per annum and develop the premises. (R. 11.)

Evidently to make way for this arrangement, on December 28, 1922, the State of Utah executed a withdrawal of its protest against Braffet's application to purchase—

> without prejudice to the interests or rights of the intervener, the said Pleasant Valley Coal Company, for the reason, as therein set forth, that it had no beneficial interest in the land in controversy because on or about May 14, 1902, it had parted with its title by issuing its patent therefor to one Laura Bird. (R. 10.)

On or about March 14, 1924, Braffet filed in the Department a petition to reopen his contest, which "was denied on March 24, 1924." (R. 12.) Thereupon Braffet brought this suit.

The Supreme Court of the District entered a decree ordering the Secretary to vacate the decision of July 31, 1922, in which he had held that Braffet had made a prima facie case before the local land officers and in which he had ordered that proceeding remanded to the local land office for further testimony, and also directing the Secretary to issue Braffet a patent upon his paying the purchase price. (R. 15.)

The Secretary took an appeal to the Court of Appeals of the District, which substituted Braffet's administrator and modified the judgment of the Supreme Court of the District, and held, notwithstanding the regulations and established rules of the Land Office, that these lands were vacant coal lands

open to purchase by Braffet, and, notwithstanding they had presumably passed to the State under its grant and disregarding the established rule of the Department that such an application amounts only to a contest of the State's right, held that Braffet acquired by his application a right to purchase which was not and could not be divested by the leasing Act.

SPECIFICATION OF ERRORS

1. The Court of Appeals erred in entering judgment directing the Secretary of the Interior to issue to Braffet a patent.

2. The Court of Appeals erred in holding that Braffet, by his application for purchase, acquired a right which prevented the United States, by subsequent legislation in the form of the leasing Act, from otherwise disposing of the coal land, and in holding that the coal leasing Act did not operate to end the necessity of proceeding with his contest.

3. The Court of Appeals erred in disregarding the regulations and established practice and decisions of the Land Department, to the effect that an application for purchase of school lands amounts only to the institution of a contest giving the applicant no right to compel the United States to sell him the land and to refrain from otherwise disposing of it.

4. The Court of Appeals erred in holding that the Department of the Interior had ever determined that the land was known coal land at the time of the State grant, and erred in holding that Braffet

had, in any event, more than a right to proceed with his contest.

SUMMARY OF ARGUMENT

The filing of the application to purchase gave Braffet merely the status of a contestant of the claim of Utah. The regulations and decisions of the Land Department provided that school lands were withdrawn from any form of entry and applications for their purchase were to be considered as contests and dealt with as such. These regulations were valid. The school land grant to Utah and the fact that the survey showed the lands to be non-mineral had the effect of withdrawing them from sale, and they were no longer vacant coal lands "not otherwise appropriated or reserved by competent authority" within the meaning of Section 2347 of the Revised Statutes.

Treating Braffet's application for purchase as the initiation of a contest, he acquired thereby no right to the land which could not be terminated by the leasing Act. The leasing Act, passed while his contest was pending and undecided, withdrew coal lands from purchase and allowed their disposition only under the leasing Act. Braffet did not have a valid claim in existence at the time of the passage of the Act such as was meant by the exception in Section 37.

If his contest had been successful he would have had no preference right to then enter or purchase the land.

If the above contentions are rejected, and Braffet is held to have a right unaffected by the leasing Act, he is not entitled to a patent, but only to have the contest reopened and the question whether the lands were known coal lands at the time of the State grant considered and decided in the Department of the Interior, and such relief he has not sought in this suit.

The Coal Company surrendered its claim under the State grant on condition that it obtain a lease, and on the assumption that Braffet's right to contest was terminated by the leasing Act. If the leasing Act did not put an end to the contest, the Coal Company is equitably entitled to be restored to the position it was in before the lease was made, and Braffet is not entitled to be placed in a better position than if his contest had been proceeded with.

ARGUMENT

I

UNDER THE DECISIONS OF THIS COURT AND THE LONG-ESTABLISHED RULES OF THE LAND DEPARTMENT, THE FILING OF THE BRAFFET APPLICATION CREATED NO RIGHT IN THE LAND WHICH PREVENTED ITS DISPOSITION BY CONGRESS

The title to the tract in question had presumptively passed to the State on January 4, 1896, the date of the admission of the State of Utah to the Union.

By the Circular of March 6, 1903 (32 Land Dec. 39), school lands had been withdrawn by the Land

Department from any form of entry, with directions to local offices to hold applications to be disposed of in the same manner as contests. The respondent contends that these regulations applied only to indemnity lands. While the preamble does refer to indemnity lands, Rule 1 (above quoted) expressly relates to school sections. The respondent claims that on January 10, 1906 (34 Land. Dec. 365, 369), the rule of 1903 was abolished and a new rule established, reading as follows:

> Claims of parties based upon mineral locations covering parts of a school section, asserting that same were known to be chiefly valuable for their mineral deposits at and prior to the time when the right of the State would have attached thereto, if at all, will be disposed of when applications for patents under the mining laws are presented.

There was no express repeal of Rule 1 of 1903, and the Department has uniformly held since 1906 that Rule 1 of 1903 is in effect. It has also held that Rule 1 relates to school sections as well as indemnity lands.

> *Charles L. Ostenfeldt,* 41 L. D. 265.
> *Santa Fe Pacific R. R. Co.* v. *California,* 34 L. D. 12.

It has long been settled in the Land Department that no application will be received, nor any rights recognized as initiated, by the tender of an application for a tract embraced in an entry of record until the entry has been canceled on the records of the local office.

Walker v. *Snider,* 19 L. D. 467.
Stewart v. *Peterson,* 28 L. D. 515, 519.
Hiram M. Hamilton, 38 L. D. 597.

In *Shepley* v. *Cowan,* 91 U. S. 330, Shepley and others claimed title to land under a patent from the State of Missouri, and based upon an approval of a selection made by the State under a certain grant. It appeared that, at the date of said selection and at date of its approval, the land was claimed by the village of Carondelet, as a part of its commons, assured to it by Act of Congress. It was years later determined, as a matter of fact, that the boundaries of said commons did *not* include this land. In holding the asserted title under the State grant and patent to be without lawful basis, this Court said, at page 336:

> The general rule of the land department is, and from the commencement of the government has been, to hold as excluded from sale or preemption lands which might, in the execution of the laws of Congress, fall within grants to others; and therefore, in this case, until it was decided by the final determination of the Secretary of the Interior or of the Supreme Court of the United States whether the northern line of the commons was that run, as alleged, by Soulard previous to 1800, or that retraced by Brown in 1834, the land between those lines, embracing the premises in controversy, was legally reserved from sale, and, consequently, from any selection by the State as part of its five hundred

thousand acres granted by the act of Sept. 4, 1841.

In *Holt* v. *Murphy,* 207 U. S. 407, 414, the Court quoted with approval from the decision in *Stewart* v. *Peterson,* 28 L. D. 515, as follows:

> In order that this important matter of regulation may be perfectly clear, it is directed that no application will be received, or any rights recognized as initiated by the tender of an application for a tract embraced in an entry of record, until said entry has been canceled upon the records of the local office.

After discussing that rule, this Court further said (p. 415):

> Such a rule, when established in the Land Department, will not be overthrown or ignored by the courts, unless they are clearly convinced that it is wrong. So far from this being true of this rule, we are of opinion that to enforce it will tend to prevent confusion and conflict of claims.

Under Section 2347, R. S., prior to the coal leasing Act, only "vacant coal lands of the United States not otherwise appropriated or reserved by competent authority" were subject to purchase. The school land grant to Utah was a reservation of the section from other disposition, even had the section not in effect been reserved under the above-mentioned rules and regulations of the Land Department made pursuant to law and recognized by

the courts. Braffet, therefore, by his application secured no other or greater right than that of a contestant of the title of the State. His application amounted to nothing more than an effort by contest to restore the land to entry. Until the contest had terminated in the course marked by the rules and regulations then in force the land was not subject to any form of entry nor to purchase by Braffet under his coal land application.

This condition created no obstacle to the full exercise of ownership by the United States.

Shepley v. *Cowan, supra.*
Frisbie v. *Whitney,* 9 Wall. 187.
The Yosemite Valley Case, 15 Wall. 77.
Campbell v. *Wade,* 132 U. S. 34, 37.
United States v. *Morrison,* 240 U. S. 192.
United States v. *Norton* (C. C. A. 5th), 19 F. (2d) 836.
Alice M. Reason, 36 L. D. 279, 280–1.
Instructions, 40 L. D. 415, 416, 417.

Vacant lands are such as are absolutely free, unclaimed, and unoccupied. *Payne* v. *U. S. ex rel. Olson,* 50 App. D. C. 119, citing *Cosmos Exploration Co.* v. *Gray Eagle Oil Co.,* 112 Fed. 4, which was affirmed in 190 U. S. 301.

At the time of the passage of the leasing Act the Braffet contest was pending and undecided. The local land officers had dismissed his contest on what amounted to a demurrer to his evidence. On his appeal the Commissioner of the General Land Of-

fice held that he had made out a prima facie case, but, ignoring the fact that the State and the Coal Company had never been heard or introduced evidence, he determined the issue on the merits in Braffet's favor. On appeal of the Coal Company and the State, the Secretary of the Interior corrected this error, and, agreeing with the Commissioner that Braffet had made a prima facie case, recognized the fact that the State and the Coal Company had never introduced evidence or rested their case, and remanded the contest in order that it might be proceeded with and the State and the Coal Company might introduce evidence. It was under these conditions that the leasing Act was passed.

If given the effect we contend for, it made further proceedings in the contest useless, because if Braffet's contest had been successful he would not have been allowed to purchase the land, as only a lease could have been given, and as to that the Coal Company had an equitable right to preference under Section 2 of the Leasing Act, having claimed the land and paid taxes on it for twenty years.

That Congress had the right in 1920 to withdraw the land from sale so far as Braffet was concerned is clear, but he contends that the leasing Act saved "valid existing claims," and that his claim was such within the meaning of the statute. The case of *Stockley* v. *United States,* 260 U. S. 532, which respondent cites, dealt with some words in

an Executive-withdrawal order and did not decide their effect, but suggested a possible construction. There is no reason to suppose that Congress intended by this saving clause in the leasing Act to give to contestants in pending undecided contests, initiated merely to restore withdrawn lands to entry, the right to proceed with the contest merely for the purpose of opening the way to entry by the general public.

If Braffet's contest had been successful he would have had no preferred right to entry or purchase. A published proclamation would have been necessary to restore the land to entry, to give equal rights to the general public. Preference rights have been expressly conferred by statute upon contestants of homestead entries (Section 2, Act of May 14, 1880, c. 89, 21 Stat. 140, 141, as amended; see U. S. C. Title 43, Section 185), but Braffet's contest was not against an entry of that character. *Hartman* v. *Warren*, 76 Fed. 157; *Howell* v. *Sappington*, 165 Fed. 944. In the absence of a statute or regulation of the Interior Department no preference right exists. There was no such statute or regulation, and the Land Department has consistently held that no preference right exists under these circumstances. See *Charles L. Ostenfeldt*, 41 L. D. 265, 267, where it was said:

> No rights were obtained by Ostenfeldt when he tendered his application to purchase, December 13, 1909, he occupying merely the status of a would-be contestant, without the

privilege, sometimes extended by statute, of a preference right of entry in event of success.

In *Utah* v. *Olson,* 47 L. D. 58, decided February 27, 1919, before the passage of the leasing Act, it was held that one who successfully contested the prima facie claim of the State of Utah to a tract in a school section upon the ground of the known coal character of the land at the date of the school land grant gains thereby no preference right to make coal entry for the tract involved.

It seems idle to argue that any such nebulous hope of being able to acquire this land in competition with the general public after a successful contest was intended to be saved by Section 37 of the leasing Act. Since Braffet had no preference right the effect of the saving clause, as construed by the respondent, would have been to protect not a special right of the contestant, but the general and equal opportunity of the public to make application for purchase. The policy of Congress was to prevent sale of valuable coal and oil deposits and to limit the public to obtaining leases returning reasonable royalties to the United States. To preserve to the general public opportunity to purchase such lands because of a pending contest like this one would be contrary to the purpose of the Act.

Respondent argues that the exception in Section 37 of "valid claims" means claims less than vested rights, as those would have been saved by the Constitution. This overlooks the practice of Congress

to insert in legislation provisions saving vested rights, so as to avoid the appearance of attempting to destroy them and to relieve the courts of the necessity of holding the legislation invalid as to such rights, but intended to be operative in other respects. Furthermore, the exception by its reference to valid claims "thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws including discovery," shows that it was not intended to save the right to continue contest proceedings in the Department but that the clause related to physical development and compliance with other conditions leading up to discovery under the laws relating to mining claims. Similar language is found in other statutes. Act of August 24, 1912, c. 369, 37 Stat. 497.

Finally, the Congressional record establishes that this exception dealt with claims which up to the passage of the leasing Act had been asserted under the mining laws, by location, possession, and development, which if continued to discovery would entitle the claimant to a patent. Cong. Rec., Vol. 58, Part 5, pages 4577–4585, 66th Cong., 1st Session.

II

IF THE LEASING ACT DID NOT ELIMINATE BRAFFET, HE WAS NOT ENTITLED TO A PATENT BUT ONLY TO CONTINUE HIS CONTEST, AND THAT RELIEF HE HAS NOT ASKED IN THIS SUIT

The respondent contends and the Court of Appeals held that the action of the Coal Company in

relinquishing its claim under the State grant in exchange for a lease, and the act of the Secretary of the Interior in making the lease, operate as an admission and decision that the land was known coal land at the date of the State grant and did not pass under it, and if the State's title therefore fails and the leasing Act did not end Braffet's right, he was entitled to a patent on the theory that the contest in the Department has been decided.

This argument overlooks several considerations. The respondent has resorted to a court of equity, which will not perpetrate an injustice. The Coal Company was insisting on its title under the State. It is evident that the Department of the Interior and the Coal Company in giving and accepting the lease under the leasing Act assumed, as they had a right to assume, that under the established regulations of the Interior Department, Braffet's application was a mere contest which gave him no right, and they concluded that the leasing Act had removed him from consideration. Under those conditions and on that assumption, and to avoid further litigation and expense, the Coal Company agreed to surrender its claim under the State grant in consideration of being given a lease. This action did not amount to a decision on the question whether the land had in fact passed under the State grant. If the regulations of the Department are to be overturned or it is to be held that the Department and the Coal Company were mistaken

as to the effect of the leasing Act, equity requires that the Coal Company be restored to as good position as it was in before the lease was made, and that Braffet be placed in no better position than if the contest had proceeded as he claims it should. The Coal Company surrendered its claim on condition that it receive a valid and effective lease. As between it and the United States, if the lease is ineffective, it is entitled to renew its claim under the State's grant. Furthermore, the United States has an interest in this contest, and if it were proceeded with and determined that the land was not known coal land in 1896 and passed under the State grant, that would eliminate Braffet and leave the United States and the Coal Company where they are to-day, as the relinquishment by the Coal Company and the acceptance of a lease by it would remain in effect.

The question as to the known character of these lands at the time of the State grant is one to be primarily decided in the Department of the Interior and not in the courts.

> *Steel* v. *Smelting Company,* 106 U. S. 447, 450.
>
> *United States* v. *Schurz,* 102 U. S. 378, 395.
>
> *Plested* v. *Abbey,* 228 U. S. 42, 51.
>
> *Cameron* v. *United States,* 252 U. S. 450, 460.

If the leasing Act did not eliminate Braffet, the most he was entitled to was to have the contest proceeded with, and the only relief he would be

entitled to in court would be a writ of mandamus to compel the Secretary of the Interior to continue the hearing of the contest and to determine it in due course. That relief Braffet has not demanded in his bill of complaint.

CONCLUSION

It is respectfully submitted that the judgments of the courts below should be reversed and the case remanded to the Supreme Court of the District of Columbia with instructions to dismiss the bill.

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